

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DOMONIQUE HINES,

Plaintiff,

vs.

KFC U.S. PROPERTIES, INC.,

Defendant.

CASE NO. 09cv2422 JM(POR)

ORDER DENYING MOTION TO
REMAND; DENYING MOTION TO
TRANSFER VENUE; SCHEDULING
ORDER

Plaintiff Domonique Hines (“Hines”) moves to remand this action to state court. Defendant KFC U.S. Properties, Inc. (“KFC”) moves for a convenience transfer to the Central District of California. All motions are opposed. Pursuant to Local Rule 7.1(d)(1), this matter is appropriate for decision without oral argument. For the reasons set forth below, both motions are denied. The court also instructs Plaintiff to obtain from chambers a hearing date on her motion for class certification, see L.R. 7.1(e)(1), and to file the motion for class certification within 30 days of entry of this order.

BACKGROUND

On October 2, 2009 Hines commenced a putative class action in the Superior Court for the County of San Diego. KFC, the only defendant, timely removed the action to federal court based upon the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §1332. Plaintiff is a citizen of California who seeks to represent a class of similarly situated plaintiffs, identified as current or former employees of KFC in the State of California. (Compl. ¶2). The court notes that the Complaint fails to identify any class period. KFC asserts that it is incorporated in Delaware with its principal place of business

1 in Kentucky. (Notice of Removal ¶8).

2 **The Claims**

3 In broad brush, Plaintiff alleges that KFC acted in furtherance of its

4 “policies and practices of not paying Plaintiffs all wages earned and due, through
5 methods and schemes which included but are not limited to, failing to pay overtime
6 premiums; failing to provide rest and meal periods; failing to properly maintain
7 records; failing to provide accurate itemized statements for each pay period; and
8 requiring, permitting or suffering the employees to work off the clock, in violation of
9 California Labor Code and Industrial Welfare Commission (“IWC”) Orders.

10 (Compl. ¶6). Plaintiff brings this action on behalf of potentially 14,200 class members who were
11 employed by KFC during the period October 2, 2005 through October 2, 2009. Based upon the
12 complaint’s allegations, Plaintiff alleges seven claims for (1) failure to provide meal periods in
13 violation of Cal. Labor Code §226.7; (2) failure to provide rest periods in violation of Cal. Labor Code
14 §226.7; (3) failure to pay overtime compensation in violation of Cal. Labor Code §510, 1194; (4)
15 failure to pay minimum wages in violation of Cal. Labor Code §§1194, 1197; (5) failure to pay all
16 wages due to discharged or quitting employees in violation of Cal. Labor Code §§201-203; (6) failure
17 to provide employees accurate itemized statements in violation of Cal. Labor Code §226, 1174,
18 1174.5; and (7) unfair business practices in violation of Cal. Bus. & Prof. Code §17200 et seq.

19 **The Archila Action**

20 On October 14, 2008 counsel for Plaintiff herein, the firm of Rastegar & Matern, commenced
21 a wage and hour case against KFC in the Central District of California before Judge Manuel Real.
22 The named Plaintiff, Kenny Archila (“Archila”), alleged the same seven causes of action, in addition
23 to a claim seeking a civil penalty pursuant to Cal. Labor Code §2699. The Archila complaint was
24 similarly filed as a putative class action in state court and subsequently removed by KFC. (Sugg Decl.
25 ¶3). The parties conducted substantial discovery in the Archila action, engaged in motion practice,
26 and retained and conducted expert discovery. On July 7, 2009, Judge Real dismissed the class
27 allegations for failure to timely comply with the Local Rules in moving for class certification. (Sugg
28 Decl. Exh. 2).

29 On the eve of trial, August 18, 2009, the parties filed a joint motion for dismissal of the action
30 with prejudice. (Sugg Decl. Exh. 6). In the joint motion, plaintiff Archila sought to preserve his right
31 to appeal certain dismissed claims, including the denial of the motion for class certification. The

1 parties anticipate completing briefing on the issues on appeal prior to June 2010.

2 DISCUSSION

3 Motion to Remand

4 Plaintiff argues that this action must be remanded to state court pursuant to 28 U.S.C. §1447
 5 because the court lacks diversity jurisdiction as KFC is a citizen of California. This argument is not
 6 persuasive.

7 Pursuant to 28 U.S.C. §1332(c)(1), “a corporation shall be deemed to be a citizen of any State
 8 by which it has been incorporated and of the State where it has its principal place of business.” To
 9 determine a corporation’s “principal place of business,” the Ninth Circuit has applied several different
 10 but related tests to assist district courts in assessing the principal place of business of a corporation:
 11 the “nerve center test,” the “place of operations test,” and the “total activities test.” Davis v. HSBC
 12 Bank Nevada, 557 F.3d 1026, 1028 (9th Cir. 2009); Tosco Corp. v. Communities for a Better Env’t,
 13 236 F.3d 495, 499 (9th Cir. 2001); Industrial Tectonics, Inc. v. Aero Alloy, 912 F.2d 1090, 1094 (9th
 14 cir. 1990). In applying these tests, the purpose remains the same: “avoid[ing] the effects of prejudice
 15 against outsiders.” Industrial Tectonics, 912 F.2d at 1094. The burden of demonstrating removal
 16 jurisdiction rests with the party asserting federal jurisdiction. Gaus v. Miller, Inc., 980 F.2d 564, 566
 17 (9th Cir. 1991).

18 Applying any of these tests, the court concludes that Kentucky is KFC’s principal place of
 19 business. Under the “nerve center test,” the court considers relevant factors such as the location of
 20 the corporate/executive offices, the location of the administrative and financial offices, the location
 21 of records, the location of the corporation’s home office, and the site where day-to-day control is
 22 exercised. Here, KFC’s corporate headquarters are located in Louisville, Kentucky as are 30 of its
 23 corporate officers. (Yeaker Decl. ¶¶9). All company-wide decision making occurs in Kentucky,
 24 including corporate decisions regarding stores located in California. Id. ¶10.

25 In large part, Plaintiff generally argues that KFC’s operations in California substantially
 26 predominate over those in other states and therefore it should be considered a citizen of California for
 27 purposes of CAFA. KFC presently has 879 corporately-owned stores located in 21 states. Of these,
 28 138 stores are located in California, 129 in Texas, 85 in Florida, 73 in Virginia, 56 in Georgia, and 50

1 in both Arizona and Illinois. (Yeaker ¶¶4-5). The fact that KFC has more stores and employees in
 2 California does not mean that KFC's operations in California "substantially predominate" for purposes
 3 of determining diversity jurisdiction. In Davis, 557 F.3d 1026, the district court determined that the
 4 nationwide electronics chain, Best Buy, Inc., was a citizen of California because it maintained more
 5 stores, employees, and sales in California than any other state. The Ninth Circuit reversed holding
 6 that the term "substantially predominate" does not mean the state with the largest population because,
 7 to do so, would mean that virtually every national retailer would be deemed a citizen of California.
 8 Here, under Davis, KFC's California-based operations do not substantially predominate in California.

9 In sum, the motion to remand is denied.

10 **The Motion to Transfer Venue**

11 KFC moves to transfer this action to the Central District of California. Under 28 U.S.C.
 12 §1404(a), the court may transfer an action to any other district or division where it might have been
 13 brought "[f]or the convenience of the parties and witnesses and in the interest of justice." 28 U.S.C.
 14 §1404(a); Goodyear Tire & Rubber Co. v. McDonnell Douglas Corp., 820 F.Supp. 503, 506 (C.D. Cal.
 15 1992). A convenience transfer under §1404(a) requires the court to assess a variety of factors and
 16 "involves subtle considerations and is best left to the discretion of the trial judge." Sparling v.
 17 Hoffman Construction, 864 F.2d 635, 639 (9th Cir. 1988). The court may consider the convenience
 18 of the parties and witnesses, and the promotion of judicial efficiency and economy in determining
 19 whether to transfer an action. Id. Private factors to be considered include the location where the
 20 operative events occurred, the convenience of the parties and non-party witnesses, the location of
 21 relevant evidence, the availability of compulsory process, and other practical considerations for the
 22 efficient and cost-effective resolution of claims. Decker Coal Co. v. Commonwealth Edison Co., 805
 23 F.2d 834, 843 (9th Cir. 1986). Courts also look to the so-called public factors such as relative docket
 24 congestion, the local public and jury pool's interest in the controversy, and issues relative to judicial
 25 economy. Id. at 508-09. Defendant has the burden of demonstrating that transfer is appropriate. See
 26 Commodity Futures Trading Comm'n v. Savage, 611 F.2d 270, 279 (9th Cir. 1981).

27 Here, the court concludes that KFC fails to establish that a venue transfer is warranted under
 28 the circumstances to promote the fair and efficient resolution of Plaintiff's' claims. With respect to

1 the private interests, Plaintiff's choice of venue is usually accorded significant weight. However,
 2 where the action is brought as a class action, Plaintiff's choice of forum is entitled to less weight. Lou
 3 v. Belzerg, 834 F.2d 730, 739 (9th Cir. 1987). The convenience of witnesses and parties does not
 4 significantly favor either judicial district as relevant evidence is located throughout the judicial
 5 districts of California. Similarly the practical considerations impacting an efficient and cost effective
 6 resolution of the action appear equally distributed between the Central and Southern Districts.

7 The so-called public interest factors also do not strongly favor transfer. The present dispute
 8 is not the type of localized controversy limited to the Southern District. Rather, the local interests in
 9 Plaintiff's wage and hour claims are distributed throughout the state with no predominate interested
 10 district. The court notes that the parties do not submit any evidence concerning the relative congestion
 11 of the courts or issues relative to judicial economy.

12 Finally, KFC raises the issue of forum shopping. KFC demonstrates that Plaintiff's counsel
 13 brought the same wage and hour claims in the Central District. The complaints in this and the Archila
 14 action are virtually identical. Plaintiff's counsel litigated the same wage and hour claims in the
 15 Central District for nearly a year, delayed moving for class certification in a timely fashion under the
 16 local rules of the Central District, and, when the motion for class certification was denied as untimely,
 17 dismissed his individual claims on eve of trial. Furthermore, the court notes that the parties conducted
 18 significant fact and expert discovery in Archila and the district court ruled on several pretrial motions.
 19 Plaintiff's counsel is currently pursuing an appeal before the Ninth Circuit of the denial of the motion
 20 for class certification. Accordingly, this interest of justice consideration favors transfer.

21 Even though Plaintiff's counsel has engaged in a form of forum shopping, the court declines
 22 to transfer the action because a §1404(a) transfer is appropriate only when the transfer is convenient
 23 for the parties and witnesses and in the interests of justice. Here, there is an insufficient showing that
 24 a venue transfer to the Central District will be more convenient for the parties and witnesses. The
 25 witnesses and parties reside throughout the state with no judicial district predominating. Furthermore,
 26 Plaintiff Hines, and the class she seeks to represent, are entitled to seek relief based upon the
 27 complaint's hour and wage claims and should not be prejudiced by counsel's failure to timely move
 28

1 for class certification in the Archila action.¹

2 **Scheduling Order**

3 Mindful of the court's obligation to resolve issues of class certification at "an early practicable
4 time," Fed.R.Civ.P. 23(c)(A), the court instructs Plaintiff to file a motion for class certification within
5 30 days of entry of this order.

6 In sum, the motion to remand is denied as is the motion to transfer venue.

7 **IT IS SO ORDERED.**

8 DATED: February 16, 2010



9
10 Hon. Jeffrey T. Miller
United States District Judge

11 cc: All parties

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¹ The court notes that Judge Real determined that the motion for class certification in Archila was procedurally barred as untimely, not that the wage and hour claims were inappropriate for class action treatment.